

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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KEVIN BISHOP,  
Plaintiff,  
v.  
GMAC MORTGAGE, *et al.*,  
Defendants

2:05-cv-00296-RCJ-LRL

**MOTION FOR NOTICE OF  
PENDENCY OF ACTION (#55)**

## REPORT & RECOMMENDATION

This matter is before the court on plaintiff's Motion for Court Facilitation of Notice to Potential Plaintiffs (#55), defendants' Opposition (#60), and plaintiff's Reply (#81). Plaintiff Kevin Bishop filed this action in proper person. In his Amended Complaint (#28), plaintiff, on behalf of himself and other "similarly situated" individuals, purports to assert a collective action pursuant to 29 U.S.C. § 216(b).

## I. Plaintiff Is Not an Adequate Class Representative

Under established precedent, plaintiff is entitled to bring his own claims to federal court without counsel, but not the claims of others. 28 U.S.C. § 1654. A pro se litigant is not an adequate class representative and may not bring the claims of others because “the competence of a layman is ‘clearly too limited to allow him to risk the rights of other.’” *See Fymbo v. State Farm Fire & Cas. Co.*, 213 F.3d 1320, 1321 (10th Cir. 2000) (holding that pro se plaintiff cannot be an adequate class representative); *Ziegler v. Michigan*, 90 Fed. Appx. 808 (6th Cir. 2004) (same); *Fowler v. Lee*, 18 Fed. Appx. 164 (4th Cir. 2001) (same); *see also C.E. Pope Equity Trust v. United States*, 818 F.2d 696, 697 (9th Cir. 1987) (although non-attorney may

1 appear pro se on behalf of himself, he has no authority to appear as an attorney for others).

2 The court need not reach the substantive issues of whether there exist "similarly situated"  
3 potential plaintiffs, whether the request falls outside the statute of limitations, and whether  
4 plaintiff falls under the "outside salesman" exemption contained in the FLSA, because he is  
5 procedurally barred from proceeding with a collective action.

6 Plaintiff concludes his Motion by requesting that the court address discovery issues and  
7 extend the discovery deadline. These issues have been addressed in a separate order filed today.

8 **RECOMMENDATION**

9 Based on the foregoing, it is the recommendation of the undersigned United States  
10 Magistrate Judge that plaintiff's Notice for Court Facilitation of Notice to Potential Plaintiffs  
11 Pursuant to 29 U.S.C. 216(b) of FLSA (#55) should be denied.

12 **NOTICE**

13 Pursuant to LR IB 3-2(a), any objections to this Report and Recommendation must be  
14 in writing and filed with the Clerk of the Court within ten (10) days from receipt of this Notice.

15 DATED this 6<sup>th</sup> day of July, 2007.

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18 **LAWRENCE R. LEAVITT**  
19 **UNITED STATES MAGISTRATE JUDGE**

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